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 •Second Circuit Court of Appeals

° Third Circuit Court of Appeals
 ‡ Supreme Court of the United States
 ≈E.D.M.I.
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Of Counsel

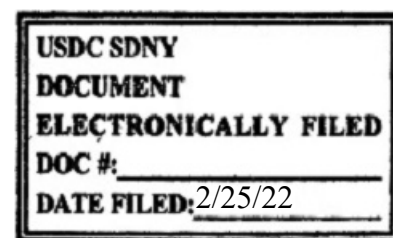
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February 23, 2022

VIA PACER

Magistrate Judge Barbara Moses
 Daniel Patrick Moynihan
 United States Courthouse
 500 Pearl St.
 New York, NY 10007-1312

MEMO ENDORSED



Re: *Rodriguez v. USA*
 1:20-cv-10619

Your Honor:

This office represents the Plaintiff in the above-referenced matter. The undersigned writes to respectfully request a conference with Your Honor in order to discuss preclusion of Defendant's employee: Carols Lamar Cortez. Mr. Cortez was the driver of the United States owned postal service truck that struck Mr. Rodriguez's vehicle, causing his injuries.

The undersigned and defense counsel for the United States have engaged in frequent discussions over the last few weeks regarding Mr. Cortez's deposition. Defense counsel made the undersigned aware that she cannot reach Mr. Cortez, nor can his employer, the United States Postal Service. Mr. Cortez is technically still employed by the government defendant; however, the Government does not know the whereabouts of their witness driver. The parties agreed to a February 25, 2022 date to depose Mr. Cortez; however, defense counsel informed the undersigned that it is not expected that Mr. Cortez would show. Defense counsel requested that the undersigned subpoena Mr. Cortez for his February 25, 2022 deposition. The undersigned sent a process server with a subpoena to Mr. Cortez's last known address; however, the process server was informed that Mr. Cortez no longer resides there. See attached **Exhibit A**.

Because Mr. Cortez cannot be located, and Plaintiff is prevented from deposing Mr. Cortez during Your Honor's discovery schedule, it is respectfully requested that Mr. Cortez be precluded from offering testimony during the trial of this case. The undersigned requests that the Court conference this matter on a date after Mr. Cortez's scheduled February 25, 2022 deposition date.

The undersigned thanks the Court for its attention to and consideration of this matter.



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Respectfully submitted,

/s/

Jason Lesnevec

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CC:

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Application GRANTED to the extent that the Court will hold a teleconference on **March 7, 2022 at 11 a.m.** At that time parties should dial (888) 557-8511 and enter the access code: 7746387. Defendant's opposition letter is due no later than **February 28, 2022** with plaintiff's optional reply due no later than **March 2, 2022**. See Moses Ind. R. Prac. § 2(e).

Barbara Moses

United States Magistrate Judge

February 25, 2022